

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 18, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP2009**

**Cir. Ct. No. 1992CF924027**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LAMONT ELLIOT MOORE,**

**DEFENDANT-APPELLANT.**

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APPEAL from orders of the circuit court for Milwaukee County:  
RICHARD J. SANKOVITZ and JEFFREY A. WAGNER, Judges. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Lamont Elliot Moore, *pro se*, appeals an order denying a postconviction motion. He also appeals an order denying his motion for

reconsideration.<sup>1</sup> The circuit court determined that his claims are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree and affirm.

## BACKGROUND

¶2 A jury found Moore guilty in 1993 of first-degree intentional homicide as a party to a crime. He pursued postconviction relief with the assistance of appointed counsel. Counsel filed a no-merit report on Moore's behalf, and Moore filed a response. We accepted the no-merit report and affirmed the conviction, concluding that no meritorious issues were presented for appeal. See *State v. Moore*, No. 1993AP2648-CRNM, unpublished slip op. (WI App Aug. 30, 1994) (*Moore I*). Thereafter, Moore filed a series of unsuccessful postconviction motions.<sup>2</sup> We affirmed orders rejecting his *pro se* claims in *State v. Moore*, No. 1999AP1706, unpublished op. and order (WI App July 7, 2000) (*Moore II*); *State v. Moore*, No. 2001AP1596, unpublished op. and order (WI App June 4, 2002) (*Moore III*); *State v. Moore*, No. 2005AP2037, unpublished slip op. (WI App May 15, 2007) (*Moore IV*); and *State v. Moore*, 2011AP1071-CR, unpublished op. and order (WI App Apr. 25, 2012) (*Moore V*).

¶3 Approximately eleven weeks after we released *Moore V*, Moore filed the postconviction motion underlying this appeal. He claimed that he learned

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<sup>1</sup> The Honorable Richard J. Sankovitz presided over the postconviction proceedings and denied Moore's postconviction motion. The Honorable Jeffrey A. Wagner reviewed and denied Moore's motion to reconsider.

<sup>2</sup> The record indicates that, before filing the postconviction motion underlying this appeal, Moore filed a *pro se* postconviction motion on June 7, 1999; on April 17, 2001; on July 7, 2005; on August 10, 2005 (motion to reconsider); on March 26, 2009; and on April 11, 2011.

on the first day of his trial that the State had proposed a plea bargain earlier in the proceeding, and he alleged that his trial counsel was ineffective for neglecting to make a “meaningful attempt” to inform him of the offer before it expired. The circuit court denied Moore’s motion and his request for reconsideration. He appeals.

## DISCUSSION

¶4 Moore seeks postconviction relief pursuant to WIS. STAT. § 974.06 (2011-12).<sup>3</sup> Section 974.06 is the primary statutory mechanism for criminal defendants to challenge their convictions after the time for a direct appeal has passed. *State v. Henley*, 2010 WI 97, ¶50, 328 Wis. 2d 544, 787 N.W.2d 350. The remedy, however, is limited, because “[w]e need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. A defendant is therefore barred from pursuing claims under § 974.06 that could have been raised in an earlier postconviction motion or direct appeal absent a “sufficient reason” for not raising or adequately addressing the claims previously. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Here, Moore suggests two reasons to permit his current claim. We do not agree that those reasons are sufficient.

¶5 First, Moore argues that his postconviction and appellate counsel was ineffective for failing to raise his current claim during his appeal of right, and he further argues that this court then erred by overlooking the claim in our independent review of the record in *Moore I*. These allegations do not aid Moore here. We have acknowledged, of course, that ineffective assistance of

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<sup>3</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

postconviction counsel may in some circumstances be a sufficient reason to permit a second postconviction motion. *See State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). We have also concluded that a sufficient reason for a second postconviction proceeding may exist when this court fails to identify an issue of arguable merit during a review of the record under WIS. STAT. RULE 809.32. *See State v. Fortier*, 2006 WI App 11, ¶27, 289 Wis. 2d 179, 709 N.W.2d 893. As we explained to Moore in *Moore IV*, however, alleged defects during the first postconviction proceeding do not warrant an endless stream of later postconviction motions.

¶6 Second, Moore argues that his current claim is supported by recent decisions of the United States Supreme Court recognizing that a defendant may seek postconviction relief based on claims that counsel was ineffective during the plea bargaining process. *See Missouri v. Frye*, 132 S. Ct. 1399 (2012) and *Lafler v. Cooper*, 132 S. Ct. 1379 (2012). As the circuit court correctly explained to Moore, however, Wisconsin law has recognized since 1985 that a defense attorney may be constitutionally ineffective by failing to afford the defendant an opportunity to accept a plea bargain. *See State v. Ludwig*, 124 Wis. 2d 600, 610-12, 369 N.W.2d 722 (1985). Fresh authority for a stale claim does not constitute a sufficient reason for serial litigation. Accordingly, we affirm.

*By the Court.*—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

